

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 672

UNITED STATES OF AMERICA, PETITIONER

v.

JOHN P. KING

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

We submit this reply brief to discuss the contention that forms the linchpin of respondent's brief in opposition: his claim that Section 451 of the Judicial Code, 28 U.S.C. 451, justifies the holding of the Court of Claims that it has jurisdiction to grant declaratory judgments against the United States.

The argument is as follows: because the Declaratory Judgment Act allows "courts of the United States" to issue declaratory judgments, and Section 451 defines "court of the United States" as "including the Court of Claims", respondent concludes that Congress explicitly conferred jurisdiction to issue declaratory judgments upon the Court of Claims.

The first defect in this analysis lies in its disre-

gard of the essential language of the Declaratory Judgment Act. That Act, 28 U.S.C. 2201, does not simply say that "any court of the United States" may enter a declaratory judgment. It says "[i]n a case of actual controversy *within its jurisdiction*, except with respect to Federal taxes, any court of the United States" may grant such relief. As we pointed out in our petition, this case is not within the subject matter jurisdiction of the Court of Claims, because respondent is not in a position to claim a money judgment. As we also pointed out, this case is within the express exception of the Declaratory Judgment Act, because it is in substance a "controversy * * * with respect to Federal taxes." Moreover, there is no statutory waiver of sovereign immunity that would permit suits for a declaratory judgment to be brought against the United States.

It would be novel, indeed, if Section 451, which is merely a definitory provision, was intended by Congress to overcome two limitations directly expressed in the Declaratory Judgment Act as well as established rules governing the sovereign immunity of the United States. Respondent's position that Section 451 plays such an extraordinary role rests on a mistaken view of that Section's history and would stretch the Declaratory Judgment Act to a point, wholly inconsistent with any prior view of its function.

The error of history is the assertion (Respondent's Br. 9) that "the 1948 revision and codification of the Judicial Code added a new Section 451 * * * expressly including the Court of Claims in the term.

"court of the United States'." Section 451 was not newly written in 1948 but rather originated in Section 308, added to the prior Judicial Code enacted on August 7, 1939, Ch. 501, 53 Stat. 1225. That section was part of the act which established the Judicial Conference and other machinery for dealing with the administrative problems of the United States courts. See S. Rep. No. 426, 76th Cong. 1st Sess. Nothing in the legislative history suggests that Congress had any intention of extending in this statute the United States' waiver of sovereign immunity so as to allow declaratory judgments against it in the Court of Claims or in any other federal tribunal. Before and after that statute was adopted, the Court of Claims has, as our petition points out, held on numerous occasions that it had no jurisdiction to enter declaratory judgments, and the courts of appeals have held the same is true of the district courts.

Furthermore, the logic of respondent's position would require the conclusion that a declaratory judgment may be entered by any tribunal listed in Section 451 as a "court of the United States." Thus, this Court, the courts of appeals, the Court of Customs and Patent Appeals, and the Customs Court would all be granted such jurisdiction, although the Declaratory Judgment Act is not intended to have such a result.

The only reasonable conclusion is what the language of the Declaratory Judgment Act directly requires: that the authority of a federal court to enter a declaratory judgment is limited to contro-

versies that are within that court's subject matter jurisdiction, as defined by other provisions. As we have shown in our petition, this case is not within the subject matter jurisdiction of the Court of Claims and that court, therefore, may not enter a declaratory judgment. As we have also shown, this same conclusion will hold true of any case in the Court of Claims, *first*, because all such cases are against the United States, and *second*, since, if a money judgment is available, declaratory relief is inappropriate, and if one is not available, the Court of Claims is without subject matter jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1969.